United Malayan Banking Corp Bhd v MWE Holdings Bhd & Ors (Dato KK Sharma and Malayan Produce Co Sdn Bhd, third party)

HIGH COURT (KUALA LUMPUR) — SUIT NO 1728 OF 1978
YAACOB ISMAIL J
10 JUNE 2003

Companies and Corporations — *Shares — Transfer of shares — Shares registered in the name of the second defendant — Plaintiff decided to register its nominees as the registered member to enforce its security in the shares — Second defendant objected to the registration of the shares alleging that the shares were given without his consent — Registration was unsuccessful — Whether registrar of the first defendant had rightly refused registration of the shares when the necessary papers for transfer were in order — Companies Act 1965 s 103*

Contract — *Estoppel — Estoppel by conduct — Shares pledged to the plaintiff made known to second defendant — Whether the second defendant was estopped from denying the plaintiff's right to register the shares — Contracts Act 1950 s 182*

The plaintiff discounted two bills of exchange from Malayan Produce Company Sdn Bhd ('MPC') pursuant to a facility granted to MPC. MPC pledged the documents with the plaintiff, ie share scrips of 734,420 shares registered in the name of the second defendant and the bank tranfer form. The plaintiff demanded payment for both the share bills which California Vegetable Oils Inc refused to accept delivery. Subsequently, the shares were split and no one objected. As a result, 524,420 shares remained. The plaintiff then decided to register its nominees as the registered member to enforce its security in the shares. However, the share registrar informed that the second defendant objected to the registration of the shares alleging that the shares were given without his consent. As a result, the registration was unsuccessful. The plaintiff sought relief for, inter alia, an order that the first and third defendants register the plaintiff and/or the nominees as the registered owners of 524,420 shares; all dividends in respect of the shares be paid to him; and the bonus share of 262,210 be registered in his name. The issues for the determination of the court were: (i) whether the registrar of the first defendant had rightly refused registration of the shares; and (ii) whether the second defendant was estopped from denying the plaintiff's right to register the shares.

Held, allowing the plaintiff's claim with costs:

(1) The objection to registration of the shares came, not from first defendant, but from the second defendant. Second defendant was not a proper party to raise the objection regarding the registration. His objection should be disregarded and not acted upon by the registrar. By refusing to register the shares, the registrar of shares had acted beyond his power. The registrar had in fact exercised the exclusive power of the first defendant to consider the issue of

registration of shares. The registrar must register the shares when the necessary papers for transfer were in order. The registrar of shares was entitled to refuse registration of a transfer upon the refusal to register the transfer by the board of directors of the company or when the instrument of transfer is not proper (s 103 of the Companies Act 1965). None of the circumstances existed in the instant case. The registrar must therefore register the shares (see p 94C–E).

(2) Based on s 182 of the Contracts Act 1950, the fact that the shares were pledged to the plaintiff was made known to the second defendant. The fact that the second defendant requested the plaintiff to release the 210,000 shares to his broker without objecting to plaintiff's right at that material time, gave rise to estoppel against the second defendant's assertion that the plaintiff had no right to the registration of the shares. By giving the share scrips and blank transfer form to JN Patel and/or the first third party, the second defendant had by his conduct represented that JN Patel and/or the first third party had authority to deal with the shares (see p 94H–I).

(3) Having considered all the evidence adduced in this case, the High Court found that the plaintiff had proven its case on a balance of probabilities. The plaintiff bank had obtained the shares validly from the third party. The defendant's claim for indemnity against the third party was dismissed with costs since there was no evidence to show that the third party had the right to pledge the shares. Regarding the bonus issues and dividends, the plaintiff was entitled to them in respect of the 524,420 shares (see p 95G–H).

[**Bahasa Malaysia summary**

Plaintif telah memberikan diskaun dua bil pertukaran dari Malayan Produce Company Sdn Bhd ('MPC') menurut satu kemudahan yang diberikan kepada MPC. MPC menyandarkan dokumen-dokumen tersebut dengan plaintif, iaitu saham skrip 734,420 saham-saham yang didaftarkan atas nama defendan kedua dan borang pemindahan bank. Plaintif menuntut bayaran untuk kedua-dua bil saham yang California Vegetable Oils Inc enggan untuk terima penghantaran. Berikutan itu, saham-saham tersebut dibahagikan dan tiada sesiapa membantah. Akibatnya, 524,420 saham-saham yang tinggal. Plaintif kemudian memutuskan untuk mendaftar calon-calonnya sebagai ahli berdaftar untuk menguatkuasakan jaminannya ke atas saham-saham tersebut. Namun begitu, pendaftar saham-saham tersebut telah memaklumkan bahawa defendan kedua membantah terhadap pendaftaran saham-saham tersebut dengan mengatakan bahawa saham-saham tersebut telah diberikan tanpa kebenaran beliau. Akibatnya, pendaftaran tersebut tidak berjaya dilakukan. Plaintif memohon relief untuk, antara lain, satu perintah bahawa defendan-defendan pertama dan ketiga mendaftarkan plaintif dan/atau calon-

calonnya sebagai pemilik berdaftar 524,420 saham-saham; semua dividen berkaitan saham-saham dibayar kepada beliau; dan bonus saham sebanyak 262,210 didaftarkan atas nama beliau. Persoalan-persoalan untuk ditentukan oleh mahkamah adalah: (i) sama ada pendaftar untuk defendan pertama telah bertindak dengan betul untuk menolak pendaftaran saham-saham tersebut; dan (ii) sama ada defendan kedua diestopkan dari menafikan hak plaintif untuk mendaftarkan saham-saham tersebut.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Bantahan terhadap pendaftaran saham-saham tersebut datang, bukan daripada defendan pertama, tetapi dari defendan kedua. Defendan kedua bukan pihak yang betul untuk menimbulkan bantahan berhubung pendaftaran tersebut. Bantahan beliau tidak perlu dihiraukan dan tidak diambil apa-apa tindakan oleh pendaftar. Dengan keengganan untuk mendaftar saham-saham tersebut, pendaftar saham-saham telah bertindak melampaui kuasa beliau. Pendaftar tersebut pada hakikatnya telah menggunakan kuasa eksklusif defendan pertama untuk menimbangkan persoalan pendaftaran saham-saham tersebut. Pendaftar tersebut hendaklah mendaftar saham-saham tersebut apabila kertas-kertas yang diperlukan untuk pemindahan tersebut adalah teratur. Pendaftar saham-saham tersebut berhak untuk menolak pendaftaran satu pemindahan berdasarkan keengganan untuk mendaftar pemindahan tersebut oleh lembaga pengarah syarikat atau apabila suratcara pemindahan adalah tidak betul (s 103 Akta Syarikat 1965). Tiada satupun keadaan-keadaan tersebut wujud dalam kes semasa. Pendaftar tersebut hendaklah mendaftar saham-saham tersebut (lihat ms 94C–E).

(2) Berdasarkan s 182 Akta Kontrak 1950, hakikat bahawa saham-saham tersebut telah disandarkan kepada plaintif telah diberitahu kepada defendan kedua. Hakikat bahawa defendan kedua telah memohon kepada plaintif untuk melepaskan 210,000 saham kepada broker beliau tanpa membantah kepada hak plaintif pada masa material tersebut, telah menimbulkan estopel terhadap penegasan defendan kedua bahawa plaintif tiada hak terhadap pendaftaran saham-saham tersebut. Dengan memberikan skrip-skrip saham-saham dan borang pemindahan yang kosong kepada JN Patel dan/atau pihak ketiga yang pertama, defendan kedua telah melalui perbuatannya menjelaskan bahawa JN Patel dan/atau pihak ketiga pertama mempunyai kuasa untuk menguruskan saham-saham tersebut (lihat ms 94H–I).

(3) Setelah menimbangkan semua keterangan dikemukakan dalam kes ini, Mahkamah Tinggi mendapati bahawa plaintif telah membuktikan kesnya atas imbangan kebarangkalian. Plaintif bank telah memperoleh saham-saham tersebut secara sah dari pihak ketiga. Tuntutan defendan untuk indemniti terhadap pihak

A ketiga ditolak dengan kos kerana tiada keterangan untuk menunjukkan bahawa pihak ketiga mempunyai hak untuk menyandarkan saham-saham tersebut. Berhubung isu-isu bonus dan dividen, plaintif berhak terhadapnya berkaitan 524,420 saham-saham (lihat ms 95G–H).]

B

Notes

For cases on the transfer of shares, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 795–822.

For cases on estoppel by conduct, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 3102–3110.

C

Cases referred to

Boon Kee Holdings Sdn Bhd & Yg Ln lwn Hotel Gallant Bhd & Enam Yg Ln [1991] 3 CLJ 2082 (refd)

D *Pan-Electric Industries Ltd v Overseas Chinese Banking Corp Ltd* [1994] 3 SLR 695 (refd)

Ho Shee Jan v Stephens Properties Sdn Bhd [1986] 2 MLJ 43 (refd)

Pan-Electric Industries Ltd v Overseas Chinese Banking Corp Ltd [1994] 3 SLR 695 (refd)

E *Xiamen International Bank v Sing Eng (Pte) Ltd* [1993] 3 SLR 228 (refd)

Legislation referred to

Companies Act 1965 ss 103, 105

F Contracts Act 1950 s 182

DP Naban (*BH Yap* with him) (*Lee Hishammuddin*) for the plaintiff.

G Rajasingam (*JM Lee* with him) (*Shearn Delamore & Co*) for the defendants.

KS Narayanan (*Vishnu Kumar* with him) (*KS Narayanan & Assoc*) for

G the third party.

Yaacob Ismail J:

PLAINTIFF'S CLAIM

H In this suit, the plaintiff sought the following relief:

(i) an order that the first and third defendants do register the plaintiff and/or its nominees as the registered owners of 524,420 shares;

(ii) all dividends in respect of the shares be paid to the plaintiff;

I (iii) the bonus shares of 262,210 be registered in plaintiff's name;

(iv) interest on the dividend payable on the shares; and

(v) costs.

Facts

On or about 1 November 1976, the plaintiff received two applications from Malayan Produce Company Sdn Bhd ('MPC') to discount two bills of exchange. The bills of exchange were subsequently discounted by the plaintiff. This was done pursuant to an outward bill purchase facility granted to MPC.

MPC pledged the following documents with the plaintiff:

(i) share scrips of 734,420 shares in the first defendant. These shares were registered in the name of the second defendant.

(ii) bank transfer form duly executed by the second defendant in respect of these 734,420 shares.

MPC instructed the plaintiff to deliver the aforesaid document to California Vegetable Oils Inc ('CVO'). CVO refused to accept the documents. In the circumstances, the plaintiff demanded payment for both the share bills.

By letter dated 19 July 1977, the first third party instructed the plaintiff to split the shares in 1,000 shares in each certificate. By letter dated 18 August 1977, the plaintiff sent the shares to the then registrar for the splitting exercise.

The shares were split into six share certificates. No one objected to the splitting of the shares.

From 15 July 1977 to 17 August 1977, some 210,000 shares of the first defendant were sold by the second defendant through one Mr Foo See Soon (DW2). On 1 September 1977, the plaintiff received instruction from MPC to deliver the 210,000 of the shares in the first defendant to Hwang & Yusoff Securities, the share brokers, upon payment of RM249,228 on 1 September 1977 and the said sum was credited into the second third party's account. As a result, the amount of the remaining shares in question is 524,420 ('the shares').

The plaintiff then decided to register its nominees as the registered member to enforce its security in the shares. This was done due to the fact that the plaintiff was unable to obtain full payment from the second third party.

The first third party and the second third party authorized the plaintiff to register the shares in its nominees by letter dated 28 February 1978.

On 7 March 1978, the plaintiff submitted the shares together with the duly executed deed of transfer for registration in its nominees name.

On 31 March 1978, plaintiff was informed by the then share registrar that the second defendant objected to the registration of the shares. The reason for the second defendant's objection was given in his solicitors' letter dated 28 March 1978 alleging that the shares were given to one Mr Patel for safe custody. The second defendant alleged that without his consent, the shares were given to the first third party who was the chairman of MPC. MPC then pledged the shares with the plaintiff for a facility. As a result of the second defendant's objection, the registration was unsuccessful.

A The share certificate and transfer form were not returned to the plaintiff after sending the same for registration. The registrar of shares of the first defendant failed to register the transfer of the shares in the plaintiff's nominees.

ISSUES

B

Whether the registrar of the first defendant had rightly refused registration of the shares

The registration of shares is governed by Companies Act 1965. This is the obligation of the company. The power is given to the company whether to C register or to refuse registration of the shares. This power should be exercised reasonably.

In *Boon Kee Holdings Sdn Bhd & Yg Ln lwn Hotel Gallant Bhd & Enam Yg Ln* [1991] 3 CLJ 2082 at p 2084, it was stated:

> Undang-undang adalah jelas bahawa:
>
> D directors can exercise their right to decline registration only by passing a resolution to that effect.
>
> Lord Reid, dalam kes *Moodie v W & J Shepherd (Bookbinders) Ltd* [1949] 2 All ER 1044 at p 1054.

The first defendant has failed to adduce any evidence that there is a positive E resolution to refuse registration of the shares in the name of the plaintiff s nominees. The burden of proof is therefore not discharged.

It is to be noted that first defendant did not object to the registration sought by the plaintiff. The registrar of shares of first defendant did not refer the transfer of the shares to the first defendant. Therefore, there is no way F that the first defendant could have exercised its power to consider the registration.

The first defendant's power to refuse registration is subject to s 105 Companies Act 1965 which provides:

> Notice of refusal to register transfer
>
> G (1) If a company refuses to register a transfer of any share debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

In *Xiamen International Bank v Sing Eng (Pte) Ltd* [1993] 3 SLR 228 at H p 239, Judith Prakash JC stated:

> This power was, however, subject to s 128(2) of the Act which provides that a company shall not refuse to register a transfer of shares by virtue of any discretion in that behalf conferred by the articles 'unless it has served on the applicant, within one month beginning on the day on which the application was made, a notice in writing stating the facts which are considered to justify I refusal in the exercise of that discretion'.

The first defendant did not issue any notice of refusal. As such, it must be concluded that there was no refusal from the company to register the shares

in the name of the plaintiff's nominees. The registrar of shares of the first defendant had no reason to refuse registration of the shares in the name of the plaintiff's nominees in the absence of such refusal from the first defendant.

In *Ho Shee Jan v Stephens Properties Sdn Bhd* [1986] 2 MLJ 43 at p 47, Chan J stated:

> I, therefore, conclude that the board has by unnecessary delay lost its chance of exercising its power of veto against the transfer of the shares to Mr Ho Shee Jan. It has lost its chance of keeping the registration of Mr Ho's shares in the company off the register.
>
> I, therefore, grant Mr Ho's application under s 162 of the Companies Act 1965 that the directors may be ordered to register the transfer of the shares. The right of transfer remains intact. The register must be rectified accordingly.

The objection to registration of the shares came, not from first defendant, but from the second defendant. Second defendant is not a proper party to raise the objection regarding the registration. His objection should be disregarded and not acted upon by the registrar. By refusing to register the shares, the registrar of shares has acted beyond his power. The registrar had in fact exercised the exclusive power of the first defendant to consider the issue of registration of shares. The registrar must register the shares when the necessary papers for transfer were in order.

The registrar of shares is entitled to refuse registration of a transfer upon the refusal to register the transfer by the board of directors of the company or when the instrument of transfer is not proper (see s 103 of the Companies Act 1965). None of the circumstances exist in the instant case. The registrar must therefore register the shares.

Is the second defendant estopped from denying the plaintiff's right to register the shares

The second defendant had knowledge that the shares were pledged to the plaintiff but raised no objection.

Section 182 of the Contracts Act 1950 provides:

> Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Based on s 182 of the Contracts Act 1950, the fact that the shares were pledged to the plaintiff was made known to second defendant by Sharma (TPW 1). The fact that second defendant requested plaintiff to release the 210,000 shares to his broker without objecting to plaintiff's right at that material time, gave rise to estoppel against second defendant's assertion that plaintiff had no right to registration of the shares.

By giving the share scrips and blank transfer form to JN Patel and/or first third party, the second defendant has by his conduct represented that JN Patel and/or the first third party has authority to deal with the shares.

In *Pan-Electric Industries Ltd v Overseas Chinese Banking Corp Ltd* [1994] 3 SLR 695 at pp 705–706, Lai Kew Chai J stated:

> There is a useful summary of the application of estoppel in relation to the commercial context with which we are concerned in the *The Law Relating to Estoppel by Representation* by Spencer and Tunner (Third Ed, 1977). Para 181 states:
>
> Holding out as agent .....
>
> 181 The application of the doctrine of estoppel to this species of representation results in the following well-established rule. Where A, by words or act, or by silence or inaction (if there is a duty to speak or act), represents to B, or to the public or a class of which B is a member, that X is his (A's) agent, or has his authority, either generally, or for the purposes of a particular transaction or type of business, and B is induced by such representation to alter his position for the worse, A is estopped from afterwards disputing, as against B, that X was invested with such agency or authority at the time at which he was so accredited. Illustrations of the operation of this such are abundant and can readily be found in, eg ..... company cases in which the owner of shares or similar securities hands them or other documents of title to a broker together with a transfer executed in blank.

At p 704 in *Pan-Electric*, Lai Kew Chai J stated as follows:

> Pan-El had left those shares and the transfer with AAS for the extended period of $1^1/_2$ years. We are of the view that by so doing, Pan-El had put AAS in a position where the latter could deal with those shares. Anyone who dealt with AAS would assume that AAS was clothed with the authority to deal in those shares. The conduct of Pan-El therefore gave rise to a clear representation, which must be implied, that AAS had the implied or ostensible authority to deal in the shares. This was the effect whether the respondents were mortgagees or buyers. It would be against the conscience of Pan-El to be allowed to assert otherwise. The beneficial interest of the respondents as mortgagees in those shares is accordingly unimpeachable.

CONCLUSION

Having considered all the evidence adduced in this case, the court finds that the plaintiff has proved its case on a balance of probabilities. The plaintiff bank had obtained the shares validly from the third party. The plaintiff's claim is allowed with costs. The defendant's claim for indemnity against the third party is dismissed with costs since there is no evidence to show that the third party had the right to pledge the shares. Regarding the bonus issues and dividends, the plaintiff is entitled to them in respect of the 524,420 shares. The dividends paid to court to be paid out to the plaintiff.

Plaintiff's claim allowed with costs.

Reported by Ezatul Zuria Azhari